



**COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER**

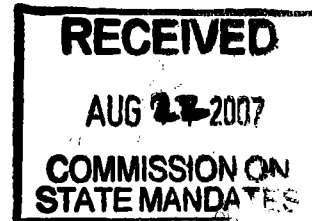
KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 525  
LOS ANGELES, CALIFORNIA 90012-2706  
PHONE: (213) 974-8301 FAX: (213) 626-5427

J. TYLER McCAULEY  
AUDITOR-CONTROLLER

WENDY L. WATANABE  
CHIEF DEPUTY

August 22, 2007

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, California 95814



Dear Ms. Higashi:

Los Angeles County's Review of Commission's Staff Analysis  
Crime Victims' Domestic Violence Incident Reports II [02-TC-18]

We submit our review of the subject Commission analysis, finding that a reimbursable State mandated program was imposed upon counties under the test claim legislation.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

A handwritten signature in cursive script that reads "J. Tyler McCauley".  
J. Tyler McCauley  
Auditor-Controller

JTM:CY:LK  
Enclosures

Los Angeles County's Review of Commission's Staff Analysis  
Crime Victims' Domestic Violence Incident Reports II [02-TC-18]

We have reviewed the draft staff analysis issued by the Commission on State Mandates [Commission] on August 6, 2007 and concur that the test claim legislation imposes a reimbursable state-mandated program upon local government.

This test claim was part of the County of Los Angeles [County] test claim on "Crime Victims' Domestic Violence Incident Reports", filed on May 11, 2000. On April 18, 2003, under guidance from the Commission, the County amended its original test claim. On April 22, 2003, the Commission's executive director severed the test claim amendment [02-TC-18] from the original test claim [99-TC-08] and deemed the test claim amendment complete.

On April 23, 2003, the amended test claim was circulated to state agencies for their comments. To date, none have been received.

The amended test claim was filed in order to incorporate important provisions of related legislation. Specifically, provisions of Family Code Section 6228 and Penal Code Section 13730 were added to the test claim legislation, as follows: Chapter 377, Statutes of 2002, amending Section 6228 of the Family Code and Chapter 483, Statutes of 2001, amending Section 13730 of the Penal Code and, with respect to implementing Section 13730(c)(3) of the Penal Code, Section 12028.5 of the Penal Code as Added and Amended by Chapter 901, Statutes of 1984, Chapters 830 and 833, Statutes of 2002.

Chapter 483, Statutes of 2001, enacted on February 21, 2001, amends Section 13730 of the Penal Code [as added by Chapter 1609, Statutes of 1984 and amended by Chapter 965, Statutes of 1995 - the original test claim legislation] and imposes additional duties on local government which were not included in the original test claim legislation.

Section 12028.5 of the Penal Code details the duties referenced in implementing Section 13730(c)(3) of the Penal Code, as added by Chapter 483, Statutes of 2001, and, accordingly, is claimed herein. Section 12028.5's duties were first added to the Penal Code by Chapter 901, Statutes of 1984 on September 6, 1984. Subsequently, Section 12028.5 was amended on September 24, 2002 by both Chapter 830, Statutes of 2002 and Chapter 833, Statutes of 2002.

Chapter 377, Statutes of 2002, enacted on January 14, 2002, amends Section 6228 of the Family Code [as added by Chapter 1022, Statutes of 1999 - the original test claim legislation] and imposes additional duties on local government which were not included in the original test claim legislation.

The County's review of Commission staff's comprehensive analysis, issued on August 6, 2007, finds that many of the provisions included in the [above] amended test claim legislation were found to impose reimbursable duties.

The County concurs with Commission staff's analysis and detailed conclusions. On the pages that follow, Commission's conclusions, on pages 33 through 36 of their analysis, are incorporated herein as Exhibit A.

Finally, it should be noted that we look forward to working with state and local agencies in developing parameters and guidelines for this program which allow a simplified and cost-efficient claiming process.

## Exhibit A

### CONCLUSION

In sum, staff finds that effective January 1, 2002, Penal Code section 13730, subdivision (c)(3) (Stats. 2001, ch. 483) imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for local agencies, on all domestic violence-related calls for assistance:

- To include on the domestic violence incident report form a notation of whether the officer or officers who responded to the domestic violence call found it necessary, for the protection of the peace officer or other persons present, to inquire of the victim, the alleged abuser, or both, whether a firearm or other deadly weapon was present at the location, and, if there is an inquiry, whether that inquiry disclosed the presence of a firearm or other deadly weapon (Pen. Code, § 13730, subd. (c)(3); Stats. 2001, ch. 483).

Effective January 1, 2003, in accordance with Penal Code section 12028.5 (Stats. 2002, ch. 833) staff finds that the following activities are a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, for local agencies, when firearms or other deadly weapons are taken into temporary custody at the scene of a domestic violence incident involving a threat to human life or a physical assault, and the firearm or other deadly weapon is discovered in plain sight or pursuant to a consensual or other lawful search.

- The one-time activity of amending the receipt for a confiscated firearm or other deadly weapon to include "the time limit for recovery as required" by section 12028.5. (Pen. Code, § 12028.5, subd. (b).)
- If the person who owns or had lawful possession of the firearm or other deadly weapon petitions the court for a second hearing within 12 months of the date of the initial hearing, showing by clear and convincing evidence that the return of the

firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat. If the court orders the firearm or other deadly weapon returned to the owner or person who had lawful possession, the local agency upon order of the court shall pay reasonable attorney's fees to the prevailing party. (Pen. Code, § 12028.5, subd. (j).)

Effective January 1, 2003, in accordance with Penal Code section 12028.5 (Stats. 2002, ch. 833) staff finds that the activities listed below are a reimbursable state-mandated program within the meaning of article XIII B, section 6 and Government Code section 17514, when firearms or other deadly weapons are discovered during an other lawful search at the scene of a domestic violence incident involving a threat to human life or a physical assault. Another lawful search includes but is not limited to the following searches: (1) a search incident to arrest, or of people the officer has legal cause to arrest; (2) a search pursuant to a warrant; or (3) a search based on statements of persons who do not have authority to consent, but have indicated to law enforcement that a weapon is present at the scene.

- To take temporary custody of any firearm or other deadly weapon when necessary for the protection of the peace officer or other persons present. (Pen. Code, § 12028.5, subd. (b).)
- To give the owner or person in lawful possession of the firearm or other deadly weapon a receipt that describes the firearm or deadly weapon and lists any identification or serial number on the firearm, and indicates where the firearm or weapon can be recovered, the time limit for recovery, and the date after which the owner or possessor can recover it. (Pen. Code, § 12028.5, subd. (b).)
- To make the firearm or other deadly weapon available to the owner or person who was in lawful possession 48 hours after seizure or as soon as possible, but no later than five business days following the seizure. Reimbursement for this activity is not required if either: (1) the firearm or other deadly weapon confiscated is retained for use as evidence related to criminal charges as a result of domestic violence incident; or (2) if the firearm or other deadly weapon is retained because it was illegally possessed, or (3) if the firearm or other deadly weapon is retained because of a court petition filed pursuant to subdivision (f) of section 12028.5.<sup>72</sup> (Pen. Code, § 12028.5, subd. (b).)

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<sup>72</sup> Subdivision (f) of section 12028.5 authorizes, within 60 days of seizure, the law enforcement agency to initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned in cases "in which a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat." This provision also requires notifying the owner.

- To sell or destroy, as provided in subdivision (c) of Section 12028,<sup>73</sup> any firearm or other deadly weapon taken into custody and held for longer than 12 months and not recovered by the owner or person in lawful possession at the time it was taken into custody. Reimbursement for this activity is not required for firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (j) of section 12028.5. (Pen. Code, § 12028.5, subd. (e).)
- If the local agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, for the agency to advise the owner of the firearm or other deadly weapon, and within 60 days of the date of seizure (or 90 days if an extension is granted) initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned. (Pen. Code, § 12028.5, subd. (f).)
- To inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. If the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the local agency, for the agency to make a diligent, good faith effort to learn the whereabouts of the person and to comply with the notification requirements in subdivision (g) of section 12028.5. (Pen. Code, § 12028.5, subd. (g).)
- If the owner or person who had lawful possession of the firearm or other deadly weapon requests a hearing, to show in court by a preponderance of evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat. If the court orders the firearm or other deadly weapon returned to the owner or person who had lawful possession, the local agency upon order of the court shall pay reasonable attorney's fees to the prevailing party. (Pen. Code, § 12028.5, subd. (h).)
- If the owner or person who had lawful possession of the firearm or other deadly weapon does not request a hearing or does not respond within 30 days of the receipt of notice, to file a petition in court for an order of default. (Pen. Code, § 12028.5, subd. (i).)

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<sup>73</sup> Section 12028, subdivision (c) requires specified weapons to be surrendered to law enforcement and authorizes disposal of them by sale at public auction or (in subd. (d)) by destruction.

Staff also finds that Family Code section 6228 (Stats. 2002, ch. 377) and Penal Code section 12028.5 (Stats. 1984, ch. 901 & Stats. 2002, ch 830)<sup>74</sup> are not a reimbursable state mandated program within the meaning of article XIII B, section 6 and Government Code section 17514 because they do not mandate a new program or higher level of service.

**Recommendation**

Staff recommends that the Commission adopt this analysis to partially approve the test claim for the activities listed above.

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<sup>74</sup> Statutes 2002, chapter 833 was double joined to Statutes. 2002, chapter 830, but only chapter 833 amended section 12028.5 because it was chaptered last (Gov. Code, § 9605).



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KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 525  
LOS ANGELES, CALIFORNIA 90012-2706  
PHONE: (213) 974-8301 FAX: (213) 626-5427

J. TYLER MCCAULEY  
AUDITOR-CONTROLLER

WENDY L. WATANABE  
CHIEF DEPUTY

**Los Angeles County's Review of Commission's Staff Analysis  
Crime Victims' Domestic Violence Incident Reports II [02-TC-18]**

**Declaration of Leonard Kaye**

Leonard Kaye makes the following declaration and statement under oath:

I Leonard Kaye, SB 90 Coordinator, in and for the County of Los Angeles, am responsible for filing test claims, reviews of State agency comments, Commission staff analysis, and for proposing parameters and guidelines (P's& G's) and amendments thereto, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the subject review of Commission staff's analysis.

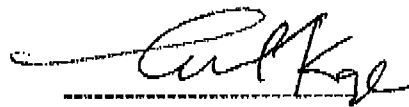
Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such costs as set forth in the subject test claim, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

" ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

8/21/07; Los Angeles, CA  
Date and Place

  
Signature



Mr. Mark Sigman  
Riverside County Sheriff's Office  
4095 Lemon Street  
P.O. Box 512  
Riverside, CA 92502

Mr. Allan Burdick  
MAXIMUS  
4320 Auburn Blvd., Suite 2000  
Sacramento, CA 95841

Mr. Jim Spano  
State Controller's Office (B-08)  
Division of Audits  
300 Capitol Mall, Suite 518  
Sacramento, California 95814

Ms. Susan Geanacou  
Department of Finance (A-15)  
915 L Street, Suite 1190  
Sacramento, CA 95814

Mr. Steve Shields  
Shields Consulting Group, Inc.  
1536 36th Street  
Sacramento, CA 95816

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, California 95814

Mr. David Wellhouse  
David Wellhouse & Associates, Inc.  
9175 Kiefer Blvd., Suite 121  
Sacramento, CA 95826

Mr. J. Bradley Burgess  
Public Resource Management Group  
1380 Lead Hill Boulevard, Suite #106  
Roseville, CA 95661

Ms. Carla Castaneda  
Department of Finance (A-15)  
915 L Street, 11th Floor  
Sacramento, CA 95814

Ms. Ginny Brummels  
State Controller's Office (B-08)  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

Mr. Glen Everroad  
City of Newport Beach  
3300 Newport Blvd.  
P.O. Box 1768  
Newport Beach, CA 92659-1768

Ms. Bonnie Ter Keurst  
County of San Bernardino  
Office of the Auditor/Controller-Recorder  
222 West Hospitality Lane  
San Bernardino, CA 92415-0018

Ms. Beth Hunter  
Centration, Inc.  
8570 Utica Avenue, Suite 100  
Rancho Cucamonga, CA 91730

Ms. Juliana F. Gmur  
MAXIMUS  
2380 Houston Avenue  
Clovis, CA 93611

Post-it	Fax Note	7671	Date	8/22/07	# of pages	10
To	Paula Higashi		From	Leonard Kaye		
Co./Dept.	CSM		Co.	LA county		
Phone #			Phone #	916-974-8564		
Fax	916-443-0278		Fax #			



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LOS ANGELES, CALIFORNIA 90012-2706  
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AUDITOR-CONTROLLER

WENDY L. WATANABE  
CHIEF DEPUTY

ADDRESS ALL CORRESPONDENCE TO:  
ACCOUNTING DIVISION  
500 W. TEMPLE ST., ROOM 603  
LOS ANGELES, CA 90012-2706

**DECLARATION OF SERVICE**

STATE OF CALIFORNIA, County of Los Angeles:

Oscar F. Alvarez states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 22nd day of August, 2007, I served the attached:

Documents: Los Angeles County's Review of Commission's Staff Analysis Crime Victims' Domestic Violence Incident Reports II [02-TC-18] including a 1 page letter of J. Tyler McCauley dated 8/22/07, a 2 page narrative, Exhibit A, and a 1 page declaration of Leonard Kaye dated 8/21/07, now pending before the Commission on State Mandates.

☒ By transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date. Commission on State Mandates FAX as well as mail of originals.

☒ By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed to the attached mailing list.

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 22nd day of August, 2007 at Los Angeles, California.

  
Oscar F. Alvarez